

> Washington, D. C. - Today, the Federal Communications Commission
> (FCC) initiated a rulemaking designed to facilitate the transition
> to digital television. Today's proceeding explores whether the FCC
> can and should mandate the use of a copy protection mechanism
> for digital broadcast television, and what impact such regulation
> would have on consumers.

Briefly: the FCC should stay out of the market.

> The FCC said that the current lack of digital broadcast copy
> protection may be a key impediment to the DTV transition's
> progress. Without a digital copy protection scheme that prevents
> the unauthorized copying and redistribution of digital media,
> programming content providers assert that they will not permit
> the digital broadcast of high quality programming. Without such
> programming, consumers may be reluctant to buy DTV receivers
> and equipment, thereby delaying the DTV transition.

This is nonsense: We already have cable to prove that people will
privately contract for access to content.

> Private industry negotiations have reached consensus on a
> technical "broadcast flag" standard (ATSC Standard A65/ A) that
> would limit copying of some programming aired by broadcast-
> TV stations. However, there is no universal agreement on the
> use and implementation of the flag.

None published, perhaps. Nevertheless, you can be certain that
if this facility exists it will be exploited to maximise profits,
not social benefit. Who's airwaves are they, anyway? Who is the
stakeholder in all this? The general public, that's who.

To maintain the level of individual participation in public life
we have enjoyed as a society, to date, it is necessary that we be
able to record, archive, analyse, and discuss ALL INFORMATION
to the extent that books and newspapers and other works were
discussed in the past.

The body of law that protects this vital aspect of democracy
carries the label "fair use".

This bill proposes to create a two tiered
society, where a few participate fully in the debate, and the
vast majority are disenfranchised spectators.

There are already copyright laws adequate to protect content
providers from commercial infringement. What this proposal
does, along with many other recent proposals, is implement a
huge "landgrab" by certain special interests intent on gaining
absolute control of content so that it cannot fall into the
public domain at the end of the copyright term. In this they
break the fundamental contract that motivates the existence of
copyright in the first place. The proposal removes the limits
on the limited monopoly that is copyright. Without such a limit
the concept of copyright, as it is expressed in the constitution,
is completely unmotivated! It is the limit on copyright that is
its salient feature. Else, there would be no need to guard against
monopolies at all.

The proposal gives content providers the means to lock up content forever. For that reason the proposal must not be implemented.

> There is also no industry
> agreement on how to enforce digital broadcast copy protection.
> Today's Notice of Proposed Rulemaking (NPRM) seeks comment on the
> jurisdictional basis for FCC action in this area and whether the
> FCC should intercede in this matter. The NPRM also asks that if
> a digital broadcast flag or other regulatory regime is needed,
> should the FCC adopt rules or create some other mechanism to
> resolve outstanding compliance, robustness and enforcement issues.
> If FCC-mandated digital broadcast copy protection rules are
> needed, the NPRM asks the following questions:
>
> - Is the broadcast flag the appropriate technological model to
> be used?

No it is not, because the individual can neither opt in, nor opt out, in any meaningful way. Nor could the individual incorporate elements of 'high quality' content in those derived works necessary to the maintenance of a free society. This ground is well covered in the fair-use concept that already exists. This proposal would effectively exempt digital content from uses recognised as vital for all other content. This exemption is not motivated by any argument put forth by those supporting the proposal.

> - Is a government mandate requiring broadcasters and
> content providers to embed the broadcast flag (or other content
> control mark) within digital broadcast programming necessary?

It is not. We have cable as the counterexample. There is no need to force this technology on everyone, when it is clear that those who want 'high quality' content will contract for it's delivery.

> Regarding reception of the digital broadcast signal, the NPRM
> seeks comment in the following areas:
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> - Should the FCC mandate that consumer electronics devices
> recognize and give effect to the broadcast flag (or other
> content control mark)?

It should not, because there are legitimate uses of that content not recognized or acknowledged by the content producers. The limited monopoly that is copyright must remain limited. It is access to the copyrighted material that motivates the existence of the copyright laws.

It would be more reasonable to propose that any content subject to technological restrictions on recording and playback should automatically, and immediately on broadcast lose all copyright protections. Let the producer choose: copyright or trade secret. But not both.

> - What is the appropriate point in a consumer electronics
> device at which digital broadcast copy protection should begin?

When the consumer chooses to participate.

This must be a meaningful choice, in that alternatives must exist.

> - Would a digital broadcast copy protection system be
> effective in protecting digital broadcast content from improper
> redistribution?

Probably not, since a determined attacker (ie, one with commercial interests, a pirate) will get the signal anyway. All this will do is gut the concept of fair-use in the digital domain.

Note that the existing law (The DMCA) already implicitly declares that technical means are not proof against improper distribution.

> - Would digital broadcast copy protection work for digital
> broadcast stations carried on cable or direct broadcast satellite
> systems? How?

If the signal exists it can be recovered. There is no need to be distracted by questions about cable vs satellite vs broadcast. The fundamental issues about fair-use are the same, as well.

> - Should the FCC mandate the use of specific copy protection
> technologies (such as DTCP/ 5C or HDCP) in consumer electronics
> devices that are designed to respond to the broadcast flag?
> And, if so, how would a particular technology receive approval
> for use and who would be the appropriate entity to make that
> decision?

The FCC should stay out of the market. Those who want to participate can contract for the services and equipment with the content providers. If the 'high quality' content is sufficiently compelling the market will surely develop. If the promise of 'high quality' content is as empty as I suspect it is, then the providers will have been justly denied their end-run around the body of fair-use case law.

> As to the impact of the broadcast flag or other digital
> broadcast copy protection mechanism on consumers, the NPRM asks
> the following questions:

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> - Will requirements to protect digital outputs interfere with
> the ability to send DTV content across secure digital networks?

There is no point in talking about sending unless you consider that there is a receiver. What kind of receiver are we talking about? One that also records (for whatever purpose, presumably lawful under fair-use case law)? This proposal shuts down that recording device, thereby depriving someone of the lawful use of the broadcast.

> - What is the impact of digital broadcast copy protection
> mechanisms on existing and future electronic equipment?

Equipment necessary to the enjoyment of the fair-use rights of consumers and scholars will be outlawed. It is equivalent to the soviet practice of licensing typewriters and mimeograph machines. It is a practice incompatible with the maintenance of a free society.

- Will digital broadcast copy protection have an effect on the
> development of new consumer technologies?

Any combination of equipment capable of recording and analysing a
signal will be outlawed. This effectively outlaws general purpose
computers.

Thank you for reading--

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> -FCC-

> Comments due: October 30, 2002 Reply Comments due: December 13, 2002

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> MB Docket 02- 230 Action by the Commission, August 8, 2002, by

> Notice of Proposed Rulemaking (FCC 02- 231). Chairman Powell,

> Commissioners Abernathy and Martin, with Commissioner Copps

> concurring and issuing a statement. Media Bureau contact: Susan

> Mort at 202- 418- 7200. News about the Federal Communications

> Commission can also be found on the Commission's web site www.fcc.gov

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